

ASSEMBLY BILL

No. 2082

Introduced by Assembly Member Atkins

February 23, 2012

An act to add Sections 6224.3, 6224.4, and 6224.5 to the Public Resources Code, relating to public lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2082, as introduced, Atkins. Public lands: State Lands Commission: violations.

Existing law establishes the State Lands Commission in the Natural Resources Agency. Under existing law, the commission classifies state land for its different possible uses and has jurisdiction over various state lands.

This bill would prohibit a person from constructing, placing, maintaining, owning, using, or possessing a structure or facility on land under the commission's jurisdiction, unless all necessary easements, leases, permits, and other instruments required by law that authorize the construction, design, placement, maintenance, ownership, use, or possession of the structure or facility have been obtained.

This bill would establish a civil penalty or fee for a violation of that provision. A person who violates that provision would either be liable for a penalty of not more than \$1,000 a day or assessed a monthly use and occupancy fee that is not more than 60% higher than the full fair market rental for each day that a violation occurs. The bill would state criteria for determining the appropriate penalty or fee. The bill would exempt a telegraph or telephone corporation undertaking specified action and a franchised cable television corporation, limited to their usage of poles, conduits, cables, wires, and associated appurtenances

under either their ownership or the ownership of an electrical corporation, from that penalty and fee.

The bill, among other things, also would establish procedures to enjoin such activity, remove a violating structure or facility, and serve notice of any violation.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6224.3 is added to the Public Resources
2 Code, to read:

3 6224.3. (a) A person shall not construct, place, maintain, own,
4 use, or possess a structure or facility on land under the
5 commission's jurisdiction unless all necessary easements, leases,
6 permits, and other instruments required by law that authorize the
7 construction, design, placement, maintenance, ownership, use, or
8 possession of the structure or facility have been obtained.

9 (b) A person, other than a telegraph or telephone corporation
10 acting pursuant to Section 7901 of the Public Utilities Code or a
11 franchised cable television corporation, as defined in Section 216.4
12 of the Public Utilities Code, and limited to their usage of poles,
13 conduits, cables, wires, and associated appurtenances under either
14 their ownership or the ownership of an electrical corporation, as
15 defined in Section 218 of the Public Utilities Code, who violates
16 subdivision (a) shall either be liable for a penalty of not more than
17 one thousand dollars (\$1,000) a day or assessed a monthly use and
18 occupancy fee that is not more than 60 percent higher than the full
19 fair market rental for each day that a violation occurs.

20 (c) In determining the appropriate penalty or fee described in
21 subdivision (b), the commission shall consider all of the following
22 factors:

23 (1) The physical extent of the violation on the land under the
24 commission's jurisdiction.

25 (2) The degree of culpability of the violator.

26 (3) The degree of cooperation of the violator.

27 (4) The past history of the violator in taking all feasible steps
28 or procedures necessary or appropriate to correct a violation.

29 (5) The violator's prior violations of statutes, rules, orders, or
30 leases pertaining to lands under the commission's jurisdiction.

1 (6) The impact the violation causes on the environment to public
2 access, the public trust, or other property interests under the
3 commission's jurisdiction.

4 (7) Any matters relevant to a fair and just result.

5 (8) Any other factors determined by the commission to be
6 relevant and consistent with the policy of the commission.

7 (d) The penalty and fee described in this section shall be
8 imposed from the first day of the violation to the day the violation
9 ends.

10 (e) If the penalty or fee described in this section is not paid
11 within the time allowed under the final order, interest shall accrue
12 at the rate prescribed by Section 6224. The final order may be
13 recorded with the county clerk in any county of this state and shall
14 have the same force, effect, and priority as a judgment lien.

15 (f) The commission may enjoin a person who violates
16 subdivision (a) from continuing that violation.

17 (g) The commission may require a person who violates
18 subdivision (a) to remove the structure or facility at the person's
19 own expense. If the violator refuses to remove the structure or
20 facility, or if the violator cannot be located, the commission may,
21 at its own expense, remove the structure or facility from the land
22 under the commission's jurisdiction. The commission may pursue
23 whatever legal remedies are available to recover the removal costs
24 from the violator, including placing a lien on the assets of the
25 violator.

26 (h) The commission may elect to take ownership of the structure
27 or facility as a fixture and may exercise the state's rights as owner
28 of the structure or facility.

29 (i) For the purposes of this section, a structure or facility shall
30 include, but is not limited to, buildings, boat houses, docks, piers,
31 revetment, fill, pilings, pipelines, groins, jetties, seawalls,
32 breakwaters, and bulkheads.

33 (j) The remedies provided in this section shall be obtained by
34 the commission through administrative action or by the Attorney
35 General through civil action. If the Attorney General prevails in
36 a civil action for a violation of this section, the state shall be
37 awarded attorney's fees and costs.

38 (k) The remedies provided by this section are in addition to and
39 not in lieu of any other penalty or sanction provided by law.

1 (l) The commission may adopt regulations necessary or useful
2 to carry out this section.

3 SEC. 2. Section 6224.4 is added to the Public Resources Code,
4 to read:

5 6224.4. (a) If the commission elects to pursue any of the
6 remedies provided under Section 6224.3 through an administrative
7 action, the commission shall first provide a 30-day notice to the
8 person against whom it seeks to impose any of the remedies. The
9 notice shall include all of the following:

10 (1) The date, time, and location of the commission hearing
11 where the person may appear and be heard.

12 (2) A statement of the authority and jurisdiction under which
13 the hearing is to be held.

14 (3) A reference to the particular sections of the statutes and rules
15 involved.

16 (4) A short and plain statement of the matters asserted or
17 charged, including a description of the violation complained of
18 with reasonable certainty as to its character and location.

19 (5) A statement indicating whether and under what
20 circumstances an order by default may be entered.

21 (b) In lieu of personal service, service of notice may be made
22 by registered mail and by posting a copy of the notice on the
23 structure or facility that is in violation of subdivision (a) of Section
24 6224.3.

25 (c) If the person fails to appear at the noticed hearing, the
26 commission may make a final order.

27 (d) A hearing may be scheduled as a regular calendar item at a
28 properly noticed commission meeting.

29 SEC. 3. Section 6224.5 is added to the Public Resources Code,
30 to read:

31 6224.5. If, at the time this section is enacted, a person is in
32 violation of subdivision (a) of Section 6224.3, that person shall
33 have six months to remedy the violation or have a completed lease
34 application with all fees and costs submitted to the commission
35 without being subject to a penalty or fee. The remedy may include,
36 but is not limited to, entering into an appropriate lease with the
37 commission or adequately removing the structure or facility.